

Addresses whether a lessor may purchase as a tax-exempt sale for resale consumable materials to be provided along with rental equipment. See 86 Ill. Adm. Code 130.1401 and 130.1405. (This is a GIL.)

November 28, 2005

Dear Xxxxx:

This letter is in response to your letter dated September 3, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please provide a general ruling on the following:

ABC is a distributor of petroleum products (lubricants and fuels). There is a question as to who is responsible for collecting sales tax with one of our customers. This particular customer has purchased off road diesel fuel from us for the purposes of operating portable diesel generator electrical sets that are rented to their customers (end users). Should the rental company pay Illinois Sales Tax to ABC OR should the end user pay the rental company this tax? Regulation 130.2013 could be interpreted to mean that rental companies should pay all applicable taxes to their suppliers. However, this regulation does NOT specifically stipulate that ancillary equipment/supplies required for the proper operation of the rental equipment should be included within this regulation.

Additionally, it is unclear whether or not the Illinois Resale Certificate is applicable in this instance. The rental equipment company has this certificate and is under the understanding that this document applies, thereby relieving them of the responsibility of paying the Sales Tax to ABC.

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

If a lessor of equipment purchases diesel fuel from a supplier, whether the lessor can purchase the diesel fuel as a tax-free purchase for resale depends on what the lessor does after he or she purchases the items and the lessor's status as a licensee under the Motor Fuel Tax Law.

If the lessor purchases diesel fuel to be sold to a customer to whom the lessor also leases items, and the lessor separately states the selling price of the diesel fuel from the rental price of the items and remits Retailers' Occupation Tax on the diesel fuel, then the lessor may be able to purchase the diesel fuel as a tax-free purchase for resale. Please note, though, that the Motor Fuel Tax Law governs who may act as a distributor of motor fuel, including diesel fuel. Before a lessor sells diesel fuel at retail, the lessor should determine whether he or she is first required to be licensed as a distributor of motor fuel under the Motor Fuel Tax Law. (See 35 ILCS 505/1 et seq.).

If the lessor intends to include the cost of the diesel fuel in the rental price he or she charges for renting equipment, then the lessor may not purchase the diesel fuel from his or her supplier as a tax-free purchase for resale. In that case, the lessor is considered the taxable user of the diesel fuel and subject to tax on his or her purchase of the diesel fuel. For information on accepting Certificates of Resale, please see 86 Ill. Adm. Code 130.1401 and 130.1405.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Samuel J. Moore
Associate Counsel